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Comment on Community Reinvestment Act Rulemaking

About Open New York

Open New York is a grassroots group advocating for abundant homes and lower rent. We believe in housing for all and housing of all types. That means we support more social housing, government subsidized housing, and market rate housing. We believe that the current practices, enshrined in zoning laws, planning processes and other policies that limit the construction of new housing in municipalities throughout New York State, have caused a dire housing shortage, raising rents to historic highs, and the continuous displacement of long-standing communities—a situation wholly incompatible with many of the goals of the Community Reinvestment Act.

Open New York is supportive of the CRA, and many of the approaches outlined in the Proposed Rulemaking Process. The attention to detail in the analysis, the breadth of the strategies outlined, and the dedication to the needs of disadvantaged communities are laudable. The purpose of our comments is to strengthen and improve the rulemaking at hand. This is not an exhaustive list of feedback, but rather a brief summary of certain points that we think should be carried through the entire rulemaking process.

Relevant Questions and Feedback

Question 1. Should the agencies consider partial consideration for any other community development activities (for example, financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities), or should partial consideration be limited to only affordable housing?

We believe that partial consideration should be considered for other community development activities that further the goals of healthy, integrated, and sustainable communities.

As local land use laws in high-opportunity neighborhoods (defined as an area with poverty rates below 10% in a metropolitan area) frequently have restrictive land use and zoning laws that prevent the construction of either mixed-income or affordable housing, we believe that there should be a density bonus for the pro-rata AH credit. This should also apply for developments near frequent transit, whether bus or rail, as transportation access is intimately linked to housing opportunity. The US Department of Transportation has already included the opportunity for affordable housing development as something to be evaluated with new transit projects; there is no reason why this policy should not be reciprocated from the housing side.



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We also believe that (partial) CRA credit should be used for last mile mobility infrastructure that services low-income or majority-minority tracts. Again, transportation is intimately linked to housing and creating transit infrastructure can help revitalize communities that have suffered from either segregation or redlining.

Finally, as the proposed rule considers allowing for intent to determine eligibility, we feel strongly that creating more housing density near transit should qualify as a community development purpose.

Question 3. Is the proposed standard of government programs having a “stated purpose or bona fide intent” of providing affordable housing for low- or moderate-income (or, under the -53- alternative discussed above, for low-, moderate- or middle-income) individuals appropriate, or is a different standard more appropriate for considering government programs that provide affordable housing? Should these activities be required to meet a specific affordability standard, such as rents not exceeding 30 percent of 80 percent of median income? Should these activities be required to include verification that at least a majority of occupants of affordable units are low- or moderate-income individuals?

We are agnostic on whether a more exacting standard should be adopted, but feel strongly that mixed-income developments that comply with New York City’s Mandatory Inclusionary Housing policy ought to be considered government-related affordable housing.

Question 4. In qualifying affordable rental housing activities in conjunction with a government program, should the agencies consider activities that provide affordable housing to middle-income individuals in high opportunity areas, in nonmetropolitan counties, or in other geographies?

We do not believe that developments that solely cater to middle-income individuals ought to be considered affordable housing for the purposes of this rulemaking. That said, we do not believe that mixed-income developments that include middle-income units should be considered disqualifying.

Question 6. What approach would appropriately consider activities that support naturally occurring affordable housing that is most beneficial for low- or moderate-income individuals and communities? Should the proposed geographic criterion be expanded to include census tracts in which the median renter is low- or moderate-income, or in distressed and underserved census tracts, in order to encourage affordable housing in a wider range of communities, or would this expanded option risk crediting activities that do not benefit low- or moderate-income renters?



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We believe that land use and density restrictions are largely responsible for the continued upward filtering of naturally occurring affordable housing; and thus, linking CRA development to the general relaxation of these restrictions, whether through density bonuses, parking requirement relief, or accessory dwelling unit legalization, would help to further naturally occurring affordable housing.

We would not be opposed to expanding the geographic criterion in the proposed fashion.

Question 7. Should the proposed approach to considering naturally occurring affordable housing be broadened to include single-family rental housing that meets the eligibility criteria proposed for multifamily rental housing? If so, should consideration of single-family rental housing be limited to rural geographies, or eligible in all geographies, provided the eligibility criteria to ensure affordability are met?

Single-family zoning is inherently incompatible with a more affordable and sustainable housing market; we think expanding the approach to include single-family rentals is counterproductive, as true affordability will only come from allowing denser, multifamily development across the board. Even in rural parts of the country, walkable, multifamily areas are far more sustainable in terms of infrastructure upkeep; we think that the approach should not be broadened, partially to encourage such densification.